Ontario
Office of the Conflict of Interest Commissioner
Bureau du commissaire aux conflits d'intérêts

OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER

Annual Report 2016/17

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Commissioner's Message

It is my pleasure to present the 2016/17 Annual Report for the Office of the Conflict of Interest Commissioner (OCOIC). 2016/17 was a very good year for the office. As Ontario's first Conflict of Interest Commissioner, I am particularly proud of two key achievements last year that allowed us to raise the profile of public sector ethics in the province.

First, in the fall of 2016, we partnered with the Institute of Public Administration of Canada (IPAC), the University of Toronto and Osgoode Hall law schools, and the offices of the federal, provincial and City of Toronto integrity commissioners to plan and host a conference on public sector ethics. Our objectives for the conference were to provide a forum for ethics practitioners, academics and decision-makers to discuss matters of common interest; to build a community of practice that would allow participants to network and learn from each other; and finally to produce two publications that could be used to shape and inform approaches and discussions of public sector ethics in the future. I am pleased to report that all three of those objectives were achieved. The conference attracted over 100 participants from government, academia and the legal community. The proceedings were published in a special issue of IPAC's Public Sector magazine and an academic journal of peer-reviewed articles will also be published.

Building on the community of practice concept that was established by this Conference in 2016 a second conference is already being planned for the spring of 2018.

Second, for a number of years I have been promoting the idea of creating a repository of decision summaries that are accessible to ethics executives across the public service providing examples of how their colleagues have addressed various ethical situations. I euphemistically refer to this initiative as "shared stories". I am pleased to report that in 2016/17, with the support of the Ontario Public Service Chief Administrative Officers' Forum, our office has finally been able to launch this initiative. We now have an inventory of decision summaries from a number of ethics executives available on our website. We hope to build on this excellent start by growing and enhancing the inventory of summaries in 2017/18 and making it more easily accessible and searchable for users.

In addition to these two major achievements, the OCOIC also partnered with Treasury Board Secretariat to produce two new educational videos that are now available on our office's website. These videos form part of our education and awareness tool kit that supports the promotion of consistent understanding and interpretation of the conflict of interest rules. They build on our inventory of training videos and cover the topics of preferential treatment and post-service obligations of former public servants.

The OCOIC continues to do the important work of addressing the everyday ethical issues (conflict of interest, political activity and financial declarations) that public servants face. This 2016/17 Annual Report provides the key results of activities within our mandated areas.

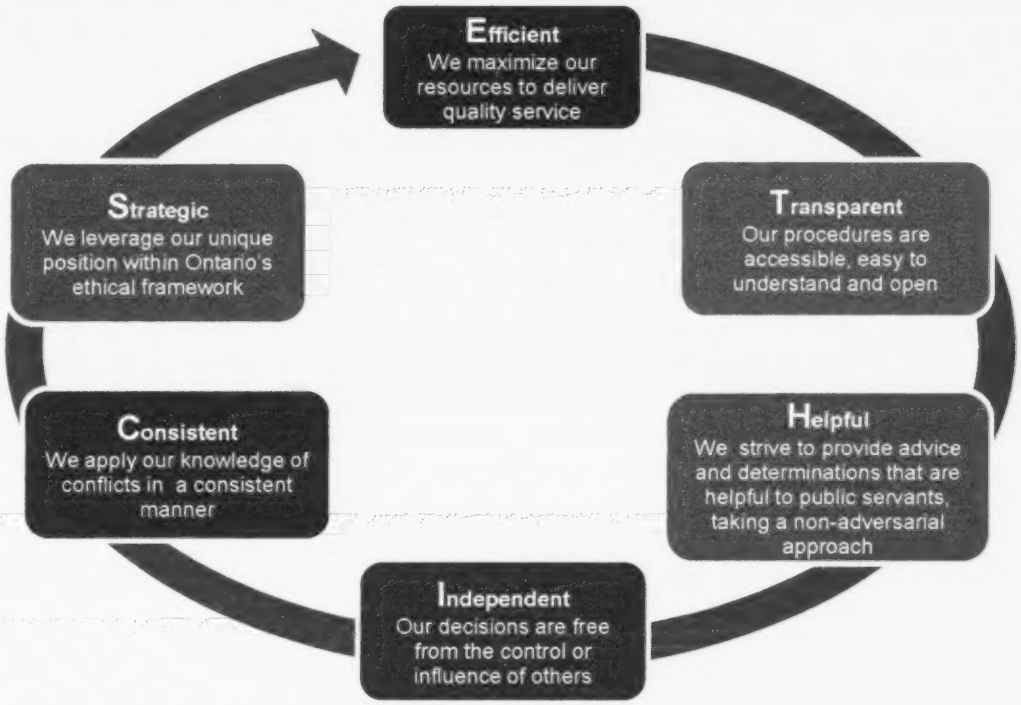
Sidney B. Linden - Commissioner

Mandate

The Office of the Conflict of Interest Commissioner (OCOIC) implements the mandate of the Commissioner as set out in the "**Public Service of Ontario Act, 2006 (PSOA)"** and its regulations as well as the "**Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009"** (ATAGAA).

Values

The values that guide the OCOIC in carrying out its mandate are captured by the acronym ETHICS as set out below.


Efficient
We maximize our resources to deliver quality service
Transparent
Our procedures are accessible, easy to understand and open
Helpful
We strive to provide advice and determinations that are helpful to public servants, taking a non-adversarial approach
Independent
Our decisions are free from the control or influence of others
Consistent
We apply our knowledge of conflicts in a consistent manner
Strategic
We leverage our unique position within Ontario's ethical framework

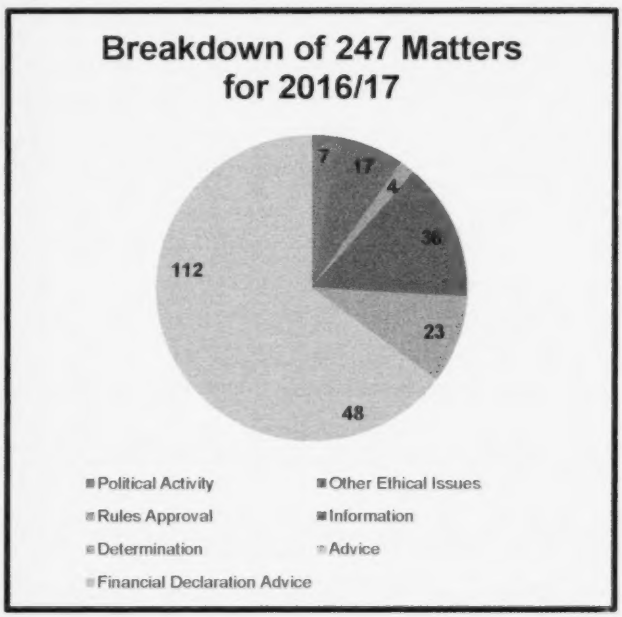
Vision

A province where people trust government

The vision of the OCOIC is to have a province where people trust government. In order to achieve this vision, the office has established three objectives to guide its activities. The following is a summary of the activities for 2016/17.

1. Contribute to public servants' understanding of, and compliance with, ethics rules

Through interactions with individuals on specific matters, the OCOIC seeks to increase understanding and compliance with the conflict of interest and political activity rules. This year the office dealt with 247 matters as set out below.



The OCOIC also makes it a priority to provide training to ethics executives. In 2016/17, the office delivered the usual two ethics executives' orientation sessions for newly appointed or re-appointed chairs of public bodies and other designated ethics executives, as part of conflict of interest education, outreach and capacity building in support of ethics, good governance and accountability.

The OCOIC recognized that public bodies do not always have access to training and information that is available to ministries. As a result, we initiated an outreach program to smaller public bodies that can benefit the most from such dedicated support. Through this outreach program, we delivered 16 presentations to public bodies.

2. Encourage excellence and consistency in the application of ethics rules

The OCOIC is in a unique position to observe the application of ethics rules across ministries and public bodies. As a result, the office is able to institute initiatives and approaches to support the consistent interpretation and application of the rules.

To encourage consistency in the application of ethics rules, the OCOIC has launched an initiative to publish decision summaries from public bodies' ethics executives as a means of sharing experiences and learning from each other. This year, in response to our invitation, 27 decision summaries were received from ethics executives in public bodies.

These decision summaries, including those of the OCOIC, are available on our website.

While all public bodies are subject to the conflict of interest rules in the PSOA and its regulations, the Act allows the commissioner to approve conflict of interest rules developed by public bodies provided those rules do not set a standard for ethical conduct that is lower than in the PSOA. The commissioner has approved eight sets of rules that are available on our website.

Under ATAGAA, the commissioner must approve the ethics plans of administrative tribunals. All of these tribunals have approved ethics plans in place.

3. Be a leader in promoting ethical conduct

The commissioner makes it a priority to interact with officials with comparable responsibilities, within and outside Ontario. This approach allows the commissioner to provide information on best practices that support the intent of the PSOA.

In September 2016, the OCOIC, in partnership with the Institute for Public Administration of Canada, the University of Toronto and Osgoode Hall law schools and several other co-sponsors, hosted a very successful conference on public sector ethics. The theme of the conference was "Building Trust in Government".

The conference brought together ethics practitioners from across Canada, academics, lawyers, public body chairs and senior executives to share ideas and best practices, expand networks and identify potential solutions to common challenges.

The proceedings were published in a special issue of IPAC's Public Sector Management magazine and an academic journal of peer-reviewed articles will also be published.

This year the OCOIC, in partnership with the HR Policy and Planning Branch of TBS, produced and released two new educational videos to promote ethical conduct, one on preferential treatment and the other on post-service obligations.

The commissioner also publishes a quarterly blog to share his thoughts, expertise and insights for the benefit of the broader ethics community. This fiscal year, the commissioner's blogs addressed the issues of building trust in government – the theme of the public sector ethics conference and how to build an organizational culture of ethics by routinely talking and learning about ethics in the workplace.

Major Activities Planned for 2017/18

Complete Public Body Outreach
Enhance Inventory of Decision Summaries
Public Sector Ethics Conference

Identifying and Sharing Organizational Best Practices

Throughout the year, the OCOIC might become aware of, or involved in, a matter that might be seen as an example of a best practice from which other organizations can learn. These best practices often pertain to the application of PSOA in situations that may be particular to the mandate of an organization. Below is an example from 2016/17.

Board Members as Beneficiaries of Programs

Agricorp, a provincial crown agency, is governed by a Board of Directors appointed by the Lieutenant Governor in Council. Several of the directors are primary agricultural producers who participate in the risk management programs that Agricorp delivers.

Agricorp's "**Code of Ethics and Professional Conduct (the Code)**" provides guidance on ethical conduct to staff and directors. Agricorp is subject to the conflict of interest rules in O. Reg. 381/07 to the PSOA. Board members sign an 'acknowledgement to the code' indicating that they have read, understand and agree to abide by the code each year. As part of this process, board members self-declare the programs they participate in to their ethics executive, the board chair. Directors also declare any "non-program" conflicts of interest. The board chair provides direction to each director as to how any conflicts of interest can be avoided or managed.

Within Agricorp, board member applications for program benefits are tracked and flagged in the organization's systems so that they can be adjudicated by a small team of program delivery staff who have no relation to the board member (board members are not involved in any adjudication or approval of program files). Should the applicant be in a benefit (or claim) position, these files are referred to the Quality Unit for a further review. After this review, approvals applicable to the level of payment are completed by Agricorp managers.

To confirm that a proper decision was made, a post-completion review of all board member files, whether a benefit is payable or not, is completed by Agricorp's Compliance Specialist. The Compliance Specialist is independent of the adjudication process and is accountable to the Senior Director, Legal Services. If any changes are required, the file is sent back to adjudication staff for reprocessing.

Performance Measures

The OCOIC established its first detailed performance measurement plan in 2013/14. The plan establishes outcomes and related measures against which data is collected and tracked to assess the success of our activities and services.

The performance measures are established for effectiveness, satisfaction and efficiency. The following is a sample of our 2016/17 achievements.

Sample Performance Measures 2016/17

Output: Activities in key areas of OCOIC mandate

Advice and Determination Letters	30
Financial Declarations Review	112
Tribunal Ethics Plans Approved	2
Presentation Delivered	16
Orientation Sessions Held	2

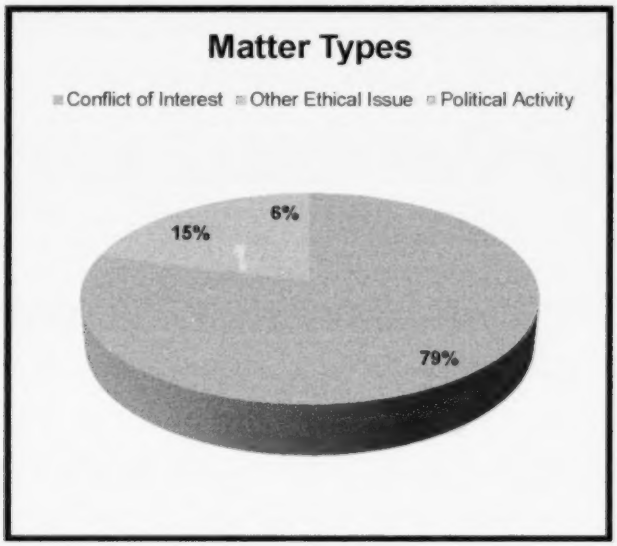
Satisfaction: With ethics executive orientations

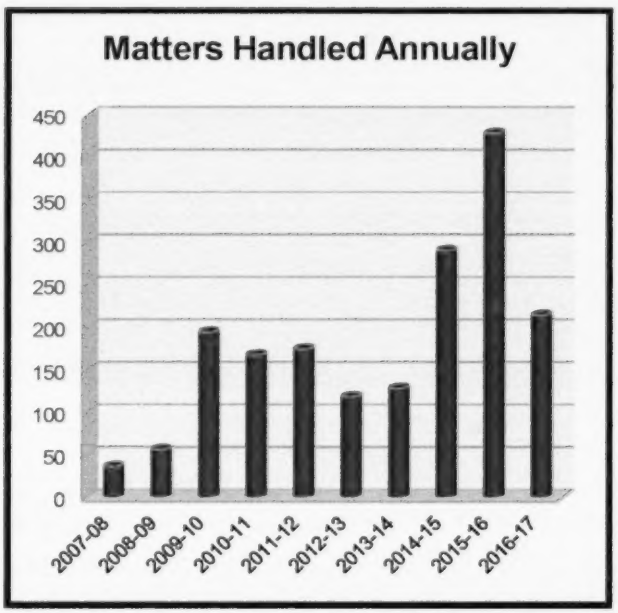
Comprehensiveness	83%
Clarity	87%
Audience	88%
Relevance	89%
Pace	85%
Overall	88%

Efficiency: Provide quality advice, determinations and other supports within customer service targets

Cases acknowledged within 5 business days	94%
Cases resolved within 10 business days	95%

OCOIC 2007-2016 Activities-at-a-glance





Illustrative Decision Summaries

The following decision summaries are examples of some of the enquiries the OCOIC addressed this year. These summaries are intended to assist public servants and ethics executives in applying the conflict of interest and political activity rules to similar situations. The summaries have been anonymized.

Conflict of Interest

Hirer or Recruiter?

A public body expressed an interest in potentially recruiting a number of individuals who had applied for advertised positions. The part-time chair of the public body also had a full time position recruiting individuals for an organization outside of the public service. In this outside role the chair did not make hiring decisions but rather interviewed candidates and provided advice as part of a multiple person selection committee. The chair sought direction from the commissioner as the outside organization was considering hiring some of the same individuals that the public body expressed an interest in.

Although the public body had not actually offered any position to the individuals, the commissioner was of the view that the chair had access to information about those individuals. The commissioner directed the chair to treat this information as confidential and to not disclose the public body's interest in any individual.

The commissioner also directed the chair to disclose the connection with these individuals to the outside organization and also the public body if these individuals were subsequently being considered for positions with the public body.

"Public Service of Ontario Act, 2006, s. 65 O. Reg. 381/07", s. 3 and 6

A Family Matter!

The child of a senior employee of a public body had recently accepted an entry level position with an organization that previously provided services to the public body. The public body had concerns that if the child's organization provided its services in the future, the senior employee could appear to be using their position to benefit the child or give preferential treatment to the organization.

The commissioner endorsed the public body's plan to mitigate these concerns through disclosure and recusals. Specifically, the senior employee was to disclose the child's employment prior to any discussions with the public body in relation to services that could be provided and must recuse himself from any decision-making process to select the organization as a service-provider. The commissioner also cautioned that if the organization was selected as a service provider, the senior employee may also need to recuse himself from discussion or decision-making related to the services provided.

"**Public Services of Ontario Act, 2006**", s. 65
O. Reg. 381/07, s. 3 and 6

Two Ethics Executives?

A public servant in a ministry was on an unpaid leave of absence. The public servant applied for a position in a public body and accepted a job offer without disclosing his status to the ministry's ethics executive, who concluded that his new employment with the public body puts him in a potential and perceived conflict of interest. The public body ethics executive contacted the commissioner for information.

The commissioner acknowledged that there were two ethics executives for this public servant, namely the deputy minister of the ministry and public body. The commissioner advised the public body ethics executive that both ethics executives should consult and find a determination on a consensus basis. If a consistent determination could not be reached, the commissioner advised that the matter should be referred back to him for a final determination.

In this matter, both ethics executives agreed and reached a common determination which resulted in the public servant formally resigning from the public body.

"Public Service of Ontario Act, 2006", s. 64

Political Activity

Vote for Me!

An employee of a public body, who was not specially restricted, had a leadership role with a political party and was also discussing his political aspirations with members of the public while carrying out his public servant role.

The PSOA includes political activity rules intended to balance the neutrality of the public service with a public servant's ability to engage in political activity. Public servants in non-specially restricted positions are permitted to engage in a wide range of political activity; essentially any activity that is not specifically prohibited or restricted.

The commissioner was of the view that having a leadership role in a political party and spreading political messages (both privately and publicly) demonstrates support for a political party and fits within the definition of political activity under subsection 72(1) of the PSOA. The commissioner drew the ethics executive attention to the prohibitions against connecting a public servant's position with any form of political activity set out in subsection 77(b) and (d) of the PSOA as well as the requirement that a public servant take an unpaid leave of absence in order to engage in any form of political activity that could conflict with the performance of his duties or conflict with the interests of the public body.

Public Service of Ontario Act, 2006, s. 64, 72, 77 and 79

Appointee

Sidney B Linden was appointed on July 30, 2007 as the Commissioner to the Office of the Conflict of Interest. He has been reappointed for a fixed term of two years effective July 30, 2017.

Financial Information for Fiscal Year 2015/16

Standard Account	2015/16 Budget	Actual Expenditures
Salaries and Wages	482,700	442,956
Employee Benefit	65,000	40,816
Transportation and Communication	22,000	9,483
Services	281,800	331,763
Supplies and Equipment	6,000	1,939
TOTAL	$ 857,500	$ 826,957

Financial Information for Fiscal Year 2016/17

Standard Account	2016/17 Budget	Actual Expenditures
Salaries and Wages	482,700	440,197
Employee Benefit	65,000	64,182
Transportation and Communication	22,000	21,823
Services	281,800	307,492
Supplies and Equipment	6,000	3,873
TOTAL	$ 857,500	$ 837,566